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Edward J. Capestany

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THE FOUR DIMENSIONS OF NATURAL LAW IN SUAREZ: OBJECTIVITY-KNOWLEDGE- ESSENCE-AND OBLIGATION

EDWARD J. CAPESTANY*

First Dimension: Objectivity

SUAREZ SAYS THAT THE NATURAL LAW is a “unified whole with respect to all men and in all places . . . a single law with respect to all times and every condition of human nature.”¹ The reason offered by Suarez is that “the law in question is the product, not of any particular state in which human nature is found, but of human nature itself in its essence.”² Thus “so long as rational nature endures,”³ natural law cannot suffer change.

Of course, Suarez was aware of “the objection that various nations have followed laws contrary to natural precepts.”⁴ His reply is that “although all the precepts of the natural law may be immutable, yet not all are equally manifest so that it is not incongruous that some of them should fail to be known.”⁵

But although natural law may be immutable, it applies to changeable human conditions. Thus natural law “discerns the mutability in the subject matter” and “adapts its own precepts to this mutability.”⁶ For Suarez

* Professor, University of Scranton.

¹ 2 THE CLASSICS OF INTERNATIONAL LAW, SUAREZ, SELECTIONS FROM THREE WORKS 220-22 (J. Scott ed. 1944).

² *Id.* at 222.

³ *Id.* at 258.

⁴ *Id.* at 220.

⁵ *Id.* at 265. “Yet such ignorance cannot exist without guilt; not, at least, for any great length of time.” *Id.* at 221.

⁶ *Id.* at 264.

the natural law works more through proximate principles or conclusions than through universal principles; for a law is a proximate rule of operation and the general principles are not rules save in so far as they are definitely applied by specific rules to the individual sorts of acts or virtues.⁷

This "proximate rule of operation" that adapts itself to the mutability of the subject matter is best manifested in the ultimate applications of natural law to the positive law—while it seems to concentrate its flexibility or plasticity as it approaches the territory of the universal principles. We shall see later about these more clearly determined forms that have remained permanent in the human race and how Suarez uses them as sources for the determination of human nature. As a matter of fact, these concrete manifestations are particularly elaborated and discussed by Suarez.

As far as the most general principles are concerned, Suarez feels they "cannot be eradicated from the hearts of men."⁸ He is referring to the primary and general principles of morality, such as "Do good and avoid evil." But Suarez distinguishes two other inferior levels among those things which are recognized by means of natural reason. He talks of other more specific concepts, such as "Justice must be observed," and of those deductions and fruits of reflection, for instance, "Adultery is wrong." In this case Suarez remarks:

Other conclusions require more reflection, of a sort not easily within the capacity of all, as in the case with the inferences that

fornication is intrinsically evil, that usury is unjust, that lying can never be justified, and the like.⁹

Suarez qualifies this sort of natural invincible ignorance, saying:

Although certain nations are in error in regard to one precept and others in regard to another precept, there nevertheless seems to be no one precept that is not made manifest to some men, at least, through the light of nature. This fact suffices to enable one to make the absolute assertion that no precept of the natural law can be totally eradicated, even through ignorance.¹⁰

Coming back to the "definite application" of the most universal principles, I want to emphasize an implied notion in Suarez' thought that sheds much light on the most typical objection leveled against natural law, the variety of customs. The particular illustration of the science of medicine serves him for the purpose of stressing the implied thought that variation cannot exist without something uniform that is varying.

Although the rules of medicine do not therefore undergo essential change but merely become manifold, so that some serve on one occasion, and others on another occasion; even so, the natural law, while it remains in itself the same, lays down one precept for one occasion and another for another occasion; and is binding (in one of its rules) at one time, though not binding previously or subsequently, and this without undergoing any change in itself, but merely because of change in the subject matter.¹¹

⁷ *Id.* at 212.

⁸ *Id.* at 221.

⁹ *Id.* at 211.

¹⁰ *Id.* at 264.

¹¹ *Id.* at 275.

This flexibility of something unchangeable is more manifest, as we said before, in the facts of anthropology. Thus, the human community in its concrete manifestations in history reveals itself always as a *human* community. These are what Maritain called "dynamic schemes of natural law" susceptible only to undeterminate expression but capable of being perceived by science and compared in between inasmuch as they hold some common denominators. Natural law does not manifest itself exclusively in some specific concrete pattern; there is only a tendentious framework with a concrete content considerably varied.

Taking advantage of the illustration of medicine used by Suarez, we can find a new type of argument to be used against the moral relativists. The historical fact of the disparity of customs does not prove a thing against the existence of a moral objective order. In medicine we find a variation of advancement ranging from the cures offered by witch doctors or medicine men to the latest treatments given by the doctors of the Mayo Clinic—heart transplants and wonder drugs. Who is to say that there is no such thing as medicine? Yet this does not prove that all the remedies are good. Thus, this large measure of variability only makes evident that man's knowledge of the content of natural law has to be progressively gained, taking also into consideration the progress or decline of the human race.

Another aspect of this common denominator is the common point of departure in human behavior that becomes evident with the following illustration. Some Indians of the Pacific Northwest used to shape the heads of their papooses for reasons of

beauty, while a different process was applied to the babies in Borneo so that they would achieve a "full-moon" face. Thus, the most universal principle of morality—"do good and avoid evil"—is bound to be manifested in the concrete even by definite errors of practical judgment—errors made by doctors who practice mercy killing or by Robin Hood, who stole from the rich to give to the poor.

We want to conclude this presentation of the objectivity of natural law by indicating the particular emphasis placed by Suarez upon proving the immutability of natural law. Suarez considers that natural law cannot undergo any change so long as human nature endures. Sometimes a precept is an inadequate statement of what is contained in the precept itself. For instance, a firearm is returned to its owner, who has become drunk.¹²

Neither can natural law be changed by authority.¹³ In this respect Suarez notes that the institution of private property does not constitute an infringement of the natural law, for the law of nature did not positively forbid the division of common property and its appropriation by individuals. Common ownership was a part of natural law only in a negative sense (or that property was to be held in common until men introduced appropriation).

Nor can natural law be changed by God¹⁴ inasmuch as the commands and prohibitions of God presupposed the intrinsic goodness or wickedness of the acts. Suarez

¹² *Id.* at 261.

¹³ *Id.* at 265.

¹⁴ *Id.* at 285.

notes, contrary to Ockham, that if God can render an otherwise prohibited act permissible, He could then command man to hate Him—which is absurd.¹⁵

For Suarez, all the Commandments involve one intrinsic principle of justice and obligation:

For if the precepts of the Second Table were not part of the natural law, then before the time of the law which was given through Moses, they would not have been binding upon men by the force of natural reason alone.¹⁶

The cases we read concerning dispensation in the Old Testament are not, properly speaking, dispensations; for God was not acting as legislator, but as Supreme Lord or Judge.¹⁷

Let us conclude this section on the dimension of objectivity of natural law by stating Suarez' fundamental reason why natural law is a single unit with respect to all men.

The rational basis of this position is that the law in question is (so to speak) a peculiar quality accompanying not the particular rational faculty of any given individual, but rather that characteristic nature which is the same in all men. Furthermore, *synderesis* is one and the same in all men; and absolutely speaking, the recognition of the truths of conclusions might be one and the same; therefore the law of nature is also one and the same in all men.¹⁸

Second Dimension—Knowledge

Unfortunately, those who discuss the origin of our knowledge of the moral order reduce it to its starting point. There are really two subproblems: first, the starting point of our moral appreciations and second, their ultimate foundation. In the first subproblem we could possibly accept the important role played by the “*à posteriori*” element of the social environment, traditions and teachings. In the second subproblem we emphasize the “*à priori*” element of the supreme moral principles inasmuch as they seem to embody “truths of reason” rather than “truths of fact.”

However, there is no perfect dichotomy or separation between these two elements inasmuch as the mind's task is to abstract the universally true values from the empirical aspects of reality. Thus, immediately upon knowing what is a whole and what is a part, the intelligence knows the whole to be greater than the part. The conditional element of experience is there, but the ultimate foundation of the truth is ultra-empirical.

On the basis of this previous classification, I want to stress the concept of “polarity” that is implied in the knowledge of natural law according to Suarez. Polarity involves a duality of opposition with a developed tension between the two poles. Now we have something here that pivots from the concrete to the abstract and vice versa.

We saw how Suarez distinguished between the primary principles of morality and those that are more specific, such as “God must be worshipped.” Both these

¹⁵ *Id.* at 288.

¹⁶ *Id.* at 290.

¹⁷ *Id.* at 299.

¹⁸ *Id.* at 220.

ethical propositions are self-evident according to Suarez. But Suarez adds a third kind of moral precept which is not immediately evident but deduced from the self-evident propositions and requires some reflection, *i.e.*, "Usury is unjust."

Thus, Suarez has established the pole of the truth of reason and the enlightening power that "cannot be eradicated from the hearts of men."¹⁹ This immutable principle is utterly flexible as it applies to changeable human conditions and, as Suarez describes it, "discerns the mutability in the subject matter" and "adapts its own precepts to this mutability."²⁰ We have, therefore, a perfect polarity—the immutable and the mutable: reason and subject matter. However, there has to be a release of this tension inasmuch as law is a "proximate rule of operation"²¹ which could not happen unless the general principles are applied specifically.

When Suarez analyzes the social institutions of man which are readily observable, he discovers in them the hallmark of what is particularly human in that concretized manifestation of the subject matter. It is very interesting to note that Suarez distinguishes in the kinds of communities "a certain natural form . . . brought about solely through the conformity of its members in rational nature. Of this sort is the community of humankind, [and another] . . . the political or mystical community, constituted through a special conjunction in the case of a group that is morally a

unit,"²² Suarez relates the former type to natural law. As Professor Joseph D. Hasset has noted, what Suarez

is getting at—and it becomes very clear in his treatment of the origin of civil authority—is that unlike the herd instinct of the animals, the communities of men have a twofold aspect. The external "form" or "institutional aspect" of the community; and the internal acts of the mind and the wills of the members "in communion" which give the origin and form to the institution.²³

Professor Hasset has centered his phenomenological study around these institutions in order to see, through Suarez' insight, how much they reveal to us about man himself, and how much man transcends himself even while seeking his own interests. Professor Hasset also stresses the element of "communication" or the sharing of the common welfare intended by the law in the concept of Suarez.

This is why Suarez is so insistent that the historical *form* of any community should not be considered as a thing-in-itself but only as a form which man "creates" by a union of minds and wills to promote and facilitate the communication of man with man.²⁴

It is evident then that the "political body" can only achieve the feature of being "a single mystical body" and may be termed "essentially a unity" if this element of shar-

¹⁹ *Id.* at 221.

²⁰ *Id.* at 264.

²¹ *Id.* at 212.

²² *Id.* at 85.

²³ Hasset, *Some Non-legal Reflections on Suarez' Treatise on Law*, 41 *NEW SCHOLASTICISM* 79, 84 (1967).

²⁴ *Id.* at 91.

ing is the primordial one.²⁵ Then over and beyond the "institutional" aspect there is a *shared purpose* which constitutes its formal cause and which is ultimately rooted in the intellect and will of the person. Thus, we understand Suarez' declaration: "Law is made with reference to a person."²⁶

This is so pronounced that, in the concept of Suarez, if the creation of a rational creature is assumed to have taken place, law has become absolutely necessary in the necessity of its purpose.

For the very reason that he is intellectual, he is capable of being subjected to moral government, which is effected through command (*imperium*); and therefore, it is connatural to such a creature and necessary to him, that he be made subject to some superior who will govern him through command, that is through law.²⁷

The intellectual feature of man renders him subject to morality, but for Suarez this very feature stems from creation. "An intellectual creature, by virtue of the very fact that he is created, has a superior to whose providence and control he is subject."²⁸

Given the creation of rational creatures, law must be said to be necessary in order that the rational creatures may live in a manner befitting their nature. As Suarez says, "He who is subject to no law cannot sin; but a rational creature does possess the power to sin; and therefore, he is of necessity subject to law."²⁹

We have to emphasize Suarez' remark that moral government which is affected through command is *connatural* to the rational creature. This *connaturality* can be very easily misunderstood. The first misunderstanding is the opinion of Vasquez that rational nature and the natural law are the same. Suarez notes that nature may be called a "standard," but this term has wider extension than the term "law."³⁰

Another misunderstanding lies in calling natural law "the natural light of reason." So far as this opinion means that the dictates of right reason, considered as the immediate and intrinsic rule of human acts, is the natural law, it may be accepted. Suarez insists, however, upon the distinction between a faculty prepared to act and the activity realized. Thus, men can have that law in their minds even though they may not be making specific acts of moral judgment. Natural law, therefore, in the strictest sense consists of the actual judgment of the mind.³¹

Suarez has always insisted that law *as it exists in the human subject* consists of an act of the mind,³² but has very carefully noted that it exists *per se* in the lawgiver.³³ This becomes clearer as he introduces the distinction between natural law and conscience: "For the term 'law' signifies a rule in general terms regarding those things which should be done; whereas 'conscience' signifies a practical dictate in a particular

²⁵ J. Scott, *supra* note 1, at 375.

²⁶ *Id.* at 80.

²⁷ *Id.* at 38.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 181.

³¹ *Id.* at 186.

³² *Id.* at 53.

³³ *Id.* at 187.

case [so to speak] rather than [the law itself]."³⁴

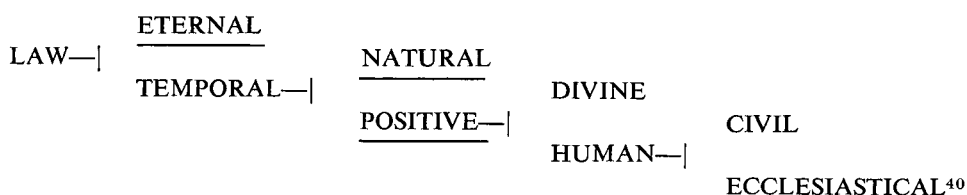
"The divine light which has been shed upon us"³⁵ is the objective reason for our participation in the eternal law. "Nevertheless, not all men have knowledge of that law formally, from the standpoint of their participation therein."³⁶ Hence "the objection is raised, that the will of the lawgiver does not suffice for the completeness of law, unless a publication, or declaration, of that will also takes place."³⁷ Suarez says that, although it is true that the natural law makes no explicit reference to God, nevertheless the light of reason makes known to man that what is against natural law is also against the Creator of Nature. Thus, for Suarez "the natural light is of itself a sufficient promulgation."³⁸ We shall have a

chance to return to this point as we discuss the fourth dimension of obligation.

Third Dimension: The Essence of Natural Law

The problem of the essence of natural law and of every type of law, according to Suarez, is centered around the controversy between Thomists and Scotists of the pre-eminence of the intellect or of the will. The influence of the "dualism" of will and intellect in the development of the concept of natural law was masterfully drawn by Anton-Herman Chroust as a vivid episode in the history of philosophy.³⁹

Before we enter into the historical aspect of the question, we should present a diagram of the division of law according to Suarez with the pertinent explanatory remarks.



³⁴ *Id.*

³⁵ *Id.* at 174.

³⁶ *Id.* at 176.

³⁷ *Id.* at 207.

³⁸ *Id.*

³⁹ Chroust, *Hugo Grotius And The Scholastic Natural Law Tradition*, 17 *NEW SCHOLASTICISM* 101 (1943).

⁴⁰ J. Scott, *supra* note 1, at 40, 45, 49. The diagram is based upon information in these pages.

⁴¹ *Id.* at 72.

⁴² *Id.* at 41.

⁴³ F. SUAREZ, *DE LEGIBUS AC DEO LEGISLATORE* I, ch. 5. His two main reasons:

- 1) Obligation is of the will.
- 2) Positive law is true law. However its only source is the will.

Explanation:

Law as it exists in the minds of the legislator is an act of just and correct will by which the superior wishes to oblige an inferior to do this or that.⁴¹

Suarez notes that "law" in its strict meaning is not to be attributed to insensate things unless metaphorically.⁴²

Many philosophers know that Suarez challenges Saint Thomas' notion that law is an act of the intellect.⁴³ However, Suarez remarks, "Law requires a correct judgment

concerning the things that should be done and a will that efficaciously moves toward those things."⁴⁴ Thus, while admitting that an intellectual judgment is necessary before the act of will, he declares that there can be no law unless the will acts.⁴⁵ The promulgation does not pertain to the essence of law inasmuch as it is only a disclosure of a cause that obliges.⁴⁶ But law as promulgated exists in the mind of the subject, and as such is an act of the intellect,⁴⁷ but this intellectual guidance is not the law but rather its effect.

Eternal law—"a free decree of the will of God who lays down the order to be observed."⁴⁸ Suarez notes that it is true that all irrational creatures are subject to God and that they are governed by Him, but their "obedience" is as metaphorical as the "law" imposed upon them.⁴⁹

Having made this distinction between Providence and eternal law, Suarez plays up the feature that makes eternal law different from other laws: since the subjects did not exist from eternity the actual promulgation is not of its essence.⁵⁰

Natural law—since "it is only by a like metaphor that natural law may be ascribed to them [animals]."⁵¹ What constitutes natural law, strictly speaking, is "that form of law which dwells within the human mind in order that the righteous may be distin-

guished from the evil."⁵² Thus, Suarez fully agrees with Saint Thomas in saying that natural law is a "participation in the eternal law on the part of the rational creature."⁵³

Positive law—Father R. W. Mulligan, S.I., made the best presentation of Suarez' thought and its implication in relation to positive law:

Suarez' position on the primacy of the will in respect to law has a special force in the realm of positive law, which deals with matters that are in themselves indifferent. As Suarez writes, "That is said to be purely positive law that adds a necessity to things which of themselves have no necessity; for, as Aristotle points out, positive law concerns things that are indifferent. . . ." Again: "Positive law is so called since it does not come from nature or from grace, but is posited by some prince in authority. Thus it is called 'positive' since it is added to the natural law, and does not necessarily flow from it." And: "The natural law differs from other laws in that other laws make wrong what they forbid, and necessary or honest what they command; but the natural law supposes that the act or object it commands is honest. . . ." This position is traditional, Suarez points out, and was held by Aristotle in the Nichomachean *Ethics* where he writes: "Of political justice, part is natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down, is not indifferent."

In contemporary terms, then, one can say that it is according to the *natural* part of political justice (i.e. according to the natural law) that men receive a living wage.

⁴⁴ J. Scott, *supra* note 1, at 70.

⁴⁵ *Id.* at 71-72.

⁴⁶ *Id.* at 72.

⁴⁷ *Id.* at 65.

⁴⁸ *Id.* at 163.

⁴⁹ *Id.* at 159.

⁵⁰ *Id.* at 146.

⁵¹ *Id.* at 41.

⁵² *Id.* at 42.

⁵³ *Id.*

The implementation of this principle, however, is left to the legal part of political justice—to the realm of opinion, not to the realm of principles. Since there are too many complex factors for the mind to have complete certitude on an actual living wage in certain circumstances, the wage set by legislators may or may not be a true living wage. Yet there is a distinct obligation to pay the salary prescribed—the obligation arising not from the material but from the efficient cause of the law, namely from the authority of the legislator and his right to obedience. Too many contemporary students of scholastic philosophy have brought scholastic jurisprudence into disrepute by forgetting this principle just enunciated and by insisting that since positive law is based on natural law we have the same mathematical certitude in both fields. This is far from being true. As a matter of fact, those legal pragmatists and functionalists who assert that only those positive laws are valid which can carry out the purposes of law (social order and temporal happiness) are much nearer the truth, would they not allow themselves to be drawn into absolute relativism.

At this point, however, the question arises: does the criticism of Suarez necessitate our abandoning the traditional definition of St. Thomas—that law is “an ordination of reason for the common good by him who has care of the community and promulgated”? Suarez himself did not think that the definition need be abandoned. He merely insisted that the term *ordinatio rationis* be understood as primarily an act of the will. As we have seen, he based his position on two general grounds: first, on the fact that an *obligatory* ordination must be primarily an act of the will. Otherwise the ordination is not obligatory, and obligation is more essential to the concept of law than direction. Secondly, on the fact that positive law has no other necessity than that which is placed on it by the will. Hence, if the criticisms of Suarez are valid—and they give considerable evidence of

being so—the term *ordinatio rationis* can be retained in the definition of law, with the understanding, however, that the word *ordinatio* pertains primarily to the will, not to the intellect. And thus the homogeneity of *law* is established—analogue though it may be—and a solution is reached to the question of how *law* can be predicated other than equivocally of natural law and positive law.⁵⁴

The historical perspective—During the fourteenth, fifteenth and sixteenth centuries the controversy between the Scotists and Thomists concerning the dualism of the preeminence of the will or intellect had its crucial point in the concept of “*freedom*.” The importance which Scotus ascribed to it as the specific characteristic of the will explains the preeminence of the will.⁵⁵

The basic position of St. Thomas was that decisions of the will depend upon the intellect.⁵⁶ The result of the controversy for St. Thomas was that truth is higher than good, for the intellect apprehends it purely while the will is concerned with its special empirical forms.⁵⁷ Scotus said that the will tends toward the good as such, while the intellect shows of what the good consists in a particular case.⁵⁸

Implications in the philosophy of God—The Scotists felt that God’s will could not

⁵⁴ Mulligan, *A Note On Law*, 20 NEW SCHOLASTICISM 258, 266-68 (1946) (footnotes omitted).

⁵⁵ DUNS SCOTUS, OPUS OXONIENSE II, d. 25, q. unica, n.16.

⁵⁶ ST. THOMAS, SUMMA THEOLOGICA I, q. 105, art. 4; q. 19, art. 16.

⁵⁷ *Id.* at q. 2, art. 1.

⁵⁸ DUNS SCOTUS, OPUS OXONIENSE II, d. 25, q. unica, n.22.

be bound to the intellect. God is the sole reason of His acts. "Nulla est prior causa."⁵⁹

Implications in the philosophy of law—While Thomas said that God commands the good because He recognizes it as such, the Scotists said that a different moral order would be possible "Quia si statueretur a Deo, recta esset."⁶⁰

Ockham went far beyond declaring that what is good is good exclusively because God has willed it; Scotus had admitted an intrinsic goodness and just a variability in the same. Ockham defended a "groundless" will. He was a nominalist all the way and exhibited a voluntaristic positivism, versus the realism of Thomas that was still present in Scotus.

The Thomistic realism had a revival in the Spanish Jurist-Theologians. The controversy, "De Auxiliis," in the sixteenth century placed the Thomistic-Scotistic controversy in the limelight. Molina gave the basis for the natural law theory with his famous statement: "Scientia Dei est causa rerum, determinata per voluntatem Scientia naturalis in Deo antecedit actum liberum suae voluntatis." This is the objectivity that becomes a precept "sese profudit in preceptum."⁶¹

The problem of obligation and its ultimate root appears forcefully in Vasquez who feels that this objectivity implies obligation by itself without the necessity of a

precept.⁶² Suarez made his criticism on this point. He said the Vasquez position led others to conclude that the natural law does not pertain to God as a legislator since it does not depend on the will of God.⁶³ This conclusion actually appears in the case of Gregory of Valencia who made a declaration similar to that of Grotius: "Licet Deum non esset"; man would have that "ostensive" law of nature. Thus, he made the famous distinction between the *lex indicans* and the *lex praecipiens*.⁶⁴

The position of Vasquez is easily understood. He is playing up the "objectivity" of natural law against a merely voluntaristic position such as that of Ockham. Valencia himself in his famous distinction between *indicans* and *praecipiens* presupposes the objectivity.

Grotius' famous statement "Etiam si daretur non esse Deum" implies only the objectivity of natural law. Grotius, who frequently referred to Suarez in *De Imperio Summarum Potestatum Circa Sacra* (Hague 1661), was not at liberty to quote Suarez on his *De Iure Belli ac Pacis*, for the simple reason that he did not want to infuriate the European monarchs who were protecting him. Every scholar in those days knew of Suarez' views on tyrants.

Suarez' position in natural law proceeds from Molina's well-known observation: "Scientia Dei est causa rerum determinata per voluntatem." This objectivity

⁵⁹ DUNS SCOTUS, OPUS OXONIENSE I, d. 8, q. 5, n.24.

⁶⁰ *Id.* at d. 44, q. unica, n.2.

⁶¹ L. MOLINA, DE IUSTITIA ET IURE, tr. 1, d. 3, n.3.

⁶² G. VASQUEZ, COMMENTARY ON THE SUMMA THEOLOGICA I-II, disq. 150, ch. 3, n.23.

⁶³ F. SUAREZ, DE LEGIBUS AC DEO LEGISLATORE II, ch. 6, n.2.

⁶⁴ *Id.*

becomes a precept (*sese profudit*). Subjectively speaking that law is nothing but "*vis intellectus, qua ea, quae ex se et natura bona sunt, ab iis quae ex se mala sunt, secernimus.*"⁶⁵

Next, Suarez confronts the extreme objectivism of Vasquez and the extreme voluntarism of Ockham.⁶⁶ "I hold that a middle course should be taken, this middle course being, in my judgment, the opinion held by St. Thomas and common to the theologians."⁶⁷

Natural law for Suarez is a prescriptive and not merely a demonstrative law. However, the Divine Will is not the cause of the goodness or evil, but rather presupposes it. For instance, it would be repugnant to say that hatred of God is wrong solely because it is prohibited by God. God is not the arbitrary author of the natural law.

In the concept of Suarez, in order to make any act a fully moral one, an insight is needed that this act coincides with the Divine Will, the Author of the natural and moral order.⁶⁸ There is a double insight, then, in the natural light of reason inasmuch as man sees that actions contrary to nature are also displeasing to the Author of that nature.

Natural law is thus defined by Suarez: "The natural light of the intellect which represents the will of God, the author of all creation, the highest lord and governor of

this creation, which compels men to observe the dictates of right reason."⁶⁹

When Suarez and Vasquez call natural law a *lex indicans* over and against the *lex praecipiens*, or merely voluntaristic law, they want only to stress the notion of the objective goodness. This position led to the exaggeration of Grotius' statement, but for Suarez the natural moral law is always an act of reason which precedes a certain conduct as being commanded by the Creator of all things.

Fourth Dimension—Obligation

We have seen that it is of the essence of natural law in the concept of Suarez that natural reason makes known to man the fact that actions contrary to nature are displeasing to the Author of that nature.

Suarez himself recognized that "certain difficulties and certain rather obscure questions shall remain in common with this matter."⁷⁰

One question is this: does a transgression of the natural law . . . involve any special kind of evil, distinct from that which the act would involve solely by reason of its non-conformity with rational nature as such. Furthermore, if that evil is of a special kind, what is its quality, and to what extent is its existence due to the force of the natural law? Again, one may ask whether it is possible to be invincibly ignorant of this special aspect of the natural law; and whether, assuming the existence of such ignorance, the commission of such an act contrary to reason would be an offence

⁶⁵ L. MOLINA, *supra* note 61, at tr. 1, d. 3, n.2.

⁶⁶ Compare F. SUAREZ, *DE LEGIBUS AC DEO LEGISLATORE*, I, ch. 5 with II, ch. 6.

⁶⁷ J. Scott, *supra* note 1, at 65.

⁶⁸ F. SUAREZ, *DE LEGIBUS AC DEO LEGISLATORE* II, ch. 6, n.7.

⁶⁹ *Id.* at I, ch. 3, n.8; II, ch. 5, ch. 6.

⁷⁰ J. Scott, *supra* note 1, at 208.

against God; and whether it would involve infinite wickedness, that is to say, whether it would be a mortal sin. But these questions pertain rather to the subject matter of sins.⁷¹

Suarez perhaps refers to the Disputation XV on sin in his treatise on faith. However, the matter of sin is dealt with in his treatise on the laws. For instance, he refers to a famous quotation from St. Thomas in which St. Thomas seems to deny the universality of the principle "things are not bad because forbidden but vice versa," since he teaches that in the existing things nothing can be morally good or bad unless it is conformed or not to the order of things established by God. However, this order presupposes the will of God and the eternal law as its cause. Therefore, the morality is reduced to the eternal law as its cause.

Suarez notes that St. Thomas, after saying that every sin is evil because forbidden by God relatively to the external law, appends, "[f]or by the very fact such an act is inordinate, it is repugnant to the natural law." This addition would be obscure, Suarez says, unless one keeps in mind the distinction between a sin as contrary to reason and a sin as an offence against God. The argument of St. Thomas, then, rather proves that sin is prohibited because evil, while sin, "is *also* characterized by a special depravity which it would not possess if the divine prohibition had not intervened."⁷² "If no such prohibition existed, that action would not possess the consummate and perfect character of guilt and of an offence

against God, which *undeniably exists in actions that are contrary to the natural law as such.*"⁷³

Suarez then considers the feasibility of the hypothesis of whether God could have abstained from prohibiting those things opposed to natural law. He says:

assuming the existence of the will to create rational nature with sufficient knowledge for the doing of good and evil . . . God could not have refrained from willing to forbid that a creature so endowed should commit acts intrinsically evil, nor could He have willed not to prescribe the necessary righteous acts.⁷⁴

Now, since a promulgation of that will is necessary so that the Divine Volition shall be capable of being made known to man, Suarez finds sufficiency of promulgation in the natural reason of man with its double insight already mentioned. But in the case of human law, in spite of the fact that all human power comes ultimately from God and every law is a participation of the eternal law, Suarez notes that the human law receives its binding force from the will of the legislator.⁷⁵ We have to keep in mind what Father Mulligan noted that positive law has no other necessity than that which is placed on it by the will. This implies that the concept of law is analogous⁷⁶ in Suarez, provided one keeps in

⁷¹ *Id.*

⁷² *Id.* at 203.

⁷³ *Id.* at 208. Notice that Suarez never talks of philosophical sin as such.

⁷⁴ *Id.* at 74.

⁷⁵ *Id.* at 175-76.

⁷⁶ In 1942, Mortimer J. Adler insisted upon the thesis that the term "law" is *not* predicated univocally. The argument of Suarez proves that the term "law" is not equivocal (provided one keeps

mind that the famous term "ordinatio rationis" pertains per se to the will.

Suarez notes that not every obligation in conscience is immediately and essentially an effect of the natural law:⁷⁷

With respect to the third precept of the Decalogue "keep holy the Sabbath day" . . . the theologians distinguish between two obligations, namely, the worship of God, and the keeping of the Sabbath day. The first, they say, is an effect of the natural law, but this is not true of the second, since it would not fall under the head of an obligation if it were not for the fact that a positive law of God has intervened.⁷⁸

"However," Suarez says, "there is no obligation in conscience which is not in some way an effect of the natural law, immediately and remotely, at least."⁷⁹

If everything refers to natural law as a source of obligation and if the first principles of natural law are self-evident and self-sufficient, then how can Suarez trace this obligation back to the Creator of that nature? Vasquez and his school forward this argument in a very forceful manner:

They say that, if it were necessary to have recourse to the knowledge of the divine will in order to feel in any way bound, we should end by not being able to assign any really final reason for the moral obligation. In fact, how could we indicate the reason for that duty which, according to the hypothesis, would be fundamental, the duty,

that is, of obeying the will of God, unless we appealed, at least in that case, to an absolute requirement of nature? Why should it be a duty to obey God? Evidently this at least is a duty which precedes the divine commands themselves, and which God exacts from man as soon as he begins to command; as regards this duty then we must say at least that it is dependent upon the ontological relation of creature to Creator; and we must say that it is based on the very nature of things, as the thinkers of Vasquez' school maintain is the case with all the duties of the natural law.⁸⁰

The school of Vasquez also has on its side the strongest argument in the common judgment of philosophers, including Suarez himself, who reduce natural law to the "per se notum" principle "do good and avoid evil." Thus, Father Elter notes that natural law derives its compelling force from the very nature of good and evil, and not from the Divine Will.⁸¹

We must agree—with some reservations—with Lombardi when he praises the ethical system of Vasquez and Elter for its "remarkable intrinsic coherence,"⁸² and we like even more his proposal of reconciliation of the two positions regarding the ultimate roots of moral obligation. But it is our opinion that Suarez' double insight into the knowledge of natural law openly rejects this harmonic or compromising conception.

When Suarez asks the very pertinent question "whether it is possible to be in-

his definition in mind) and that the concept of law is analogous, is the conclusion that naturally flows.

⁷⁷ J. Scott, *supra* note 1, at 229.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ R. LOMBARDI, *THE SALVATION OF THE UNBELIEVER* 153 (D. White trans. 1956).

⁸¹ E. ELTER, *COMPENDIUM PHILOSOPHIA MORALIS* 54-71 (1934).

⁸² R. LOMBARDI, *supra* note 80, at 155.

vincibly ignorant of this special aspect (solely by reason of its non-conformity) of natural law,"⁸³ surely he must be aware of the fact that some of the special duties of natural law involve the relation to God. Thus, from this point of view, invincible ignorance is overruled. For this reason, Suarez asserts that the perfect sense of guilt as an offence to God "undeniably exists in actions that are contrary to the natural law as such."⁸⁴

We would stress the fact that although Suarez makes, as did St. Thomas, the *mental distinction* between a sin as contrary to reason and as an offense against God, he never presents these two aspects as separate realities. Rather, he presents the second one as the most inclusive and as an additional and total expression of a single reality.

However, the issue of the discussion is neither the possibility nor impossibility of invincible ignorance of God in the precepts of natural law nor the considerations of practical applications of good and evil to such cases as parents' duty to educate their children—cases which have no reference to God. The issue is that *the fundamental principle of morality is not related to the will of God*—inasmuch as this principle is a self-evident principle. Therefore, there is no necessary connection between the moral sense and the idea of God. If so, if this connection fails, the argument from the moral conscience to prove the existence of God also fails.⁸⁵ However, some scho-

lastic thinkers like Billot⁸⁶ consider as quite inconceivable any moral obligation without explicit knowledge of God. Other thinkers have a more mitigated opinion and restrict this knowledge to an implicit one inasmuch as it would be impossible for a man to bind himself to an obligation unless he somehow accepted the idea of a Superior Order. But this reasoning takes for granted that moral obligation cannot be felt without the coexistent idea of a superior being. This would be flatly denied by moral philosophers like Father Elter, who sustains that moral obligation can find its proximate explanation in the requirements of the rational nature of man per se fully equipped for its perfection. We could then say with John Wild:

What binds us to the natural law and obliges us to obey it? The answer is quite clear—the striving or tending of our nature toward its end; the natural love of good, without which we would not be human; and the sanctions imposed by our nature and the whole of which it is a part.⁸⁷

When Wild refers to these sanctions he carefully distinguishes between the negative and the positive or ultimate:

This [latter] is found only in the aspiration of our nature to that which can perfect it and bring it to happiness. Without this positive sanction, the negative sanctions [rewards—punishments] would have no force.

principle. However, obligation seems to be rather a psychological phenomenon.

⁸⁶ L. BILLOT, *DE DEO UNO ET TRINO* 49-52 (1926).

⁸⁷ J. WILD, *INTRODUCTION TO REALISTIC PHILOSOPHY* 55 (1948).

⁸³ J. Scott, *supra* note 1, at 83.

⁸⁴ *Id.* at 204.

⁸⁵ Provided that its logical foundation is this

Unless we tended naturally to the good the failure to achieve this good would be no punishment.⁸⁸

We can say, then, that moral necessity is derived from the will aspiring for its ends.

The problem, however, of Suarez could be that he jumps from the proximate source of obligation (human nature) to the ultimate one. We all know, of course, that every created nature depends on the Divine Essence and on the Divine Will. Therefore, he who violates the order of nature is also doing something displeasing to the Creator of that nature. So far, so good, but are we not moving here from the ontological to the psychological order? Suarez would reply "that the natural law contains a special precept enjoining the love of God, as the Author of nature" and that it follows from this assertion *that the natural law*, taken as a whole, *obliges man*, viewed in the light of pure nature, *to refer himself and all his works to God* as his final end; for thus to refer oneself and one's works is involved in a love of God above all things.⁸⁹ However, since this precept is in affirmative form, it is binding *not continuously*, but only at suitable times; *and therefore, that love is not necessary in order that other precepts may be fulfilled* completely and without the transgression of some natural precept. For at times there may occur a fit occasion for the honoring of one's parents which is not an occasion calling for the love of God, and under such circumstances, I may fulfill the precept of filial piety, even though—insofar as concerns

the part of the active agent—such fulfillment may be in no way motivated by the love of God.

However, we must add that every work whereby a natural precept is fulfilled tends of its own nature toward God as its final end, and in itself contributes to His glory. For every such work issues from God as its chief and primary source; moreover, through it the will of God is in actual fact fulfilled *even if the agent does not formally work to this end*. And again it is a righteous work, and one suited to the final natural end of man, which is, primarily, God.

The foregoing, then, provides a *sufficiently clear* solution for the question of the extent to which *this obligation may be derived*⁹⁰ from the pure law of nature and from the pure love of God as the Author of nature, a love which is in harmony with natural reason. For, in this order, the mode of acting from the love of God consists simply in the activity of that love itself, or of something else, under the command of that love.

The former kind of action will be required only on occasions when the precept (enjoining it) is in active force; and consequently, by reason of that same precept, this mode of love is essential in order that the natural law as a whole and collectively may be fulfilled, although it is not essential to the fulfillment of individual moral precepts, since the latter do not all impose, as an obligation, the love of God.

The second kind of action, if the command in question is assumed to be formal, is manifestly not required; for no particular precept is laid down regarding this point, nor do the other individual precepts impose this obligation. The truth of the

⁸⁸ *Id.* at 56.

⁸⁹ J. Scott, *supra* note 1, at 244.

⁹⁰ Of the love of God as included in a natural law precept.

foregoing is self-evident, since, if it were not true, right action would always be joined of necessity to an actual love of God, and to assert that such is the case would be absurd.⁹¹

The thought of Suarez in this paragraph is itself the best reply to the objection we met before—the objection of moral duties which men may fulfill without any reference to God. Suarez clarifies that the command to love God is in the affirmative, and thus it is binding not continuously as a negative command would bind. Suarez even asserts that a morally good act need not be based on either the actual or the virtual love of God.⁹² He adds “that not even the habitual disposition of such love is required,”⁹³ and concludes that “it is sufficient that there should exist the natural relation or tendency which is included in the righteous action itself, *by its very nature*.”⁹⁴

Suarez is consistent, for he has tersely declared that “the intrinsic evil or good of a given act is to be estimated in accordance with its object and not on the basis of its habitual relation to the ultimate end, or of its necessity for the attainment of that end.”⁹⁵

His words also make us think of the intolerable rigorism that would follow from this necessary relation to the ultimate end. Suarez adds, however, that every moral act tends of its very nature toward God “even

if the agent does not formally work to this end.”⁹⁶

It would help, perhaps, to clarify Suarez’ thought, to think in terms of the analogy of a trip. One who drives to a destination does not have to be thinking all the time while driving to his point of arrival. However, who is going to deny him any sense of direction? Suarez’ thought is also clear on this point, for he recognizes that natural law obliges man to order himself and his works toward God as the final End.⁹⁷

But all in all, in the writings of Suarez, there is no direct reply to the fundamental position of Vasquez that the first principle of morality, “do good and avoid evil,” is *notum per se*. Nor is there a clear-cut reply to the question, “Why should it be a duty to obey God?”

Now, since Suarez assigns God as the ultimate root of moral obligation, is there a possibility for a compromise between these two positions? Before we bring forward the compromising thesis presented by Father Elter and expounded by Lombardi, we must add some observations. In the first place, we have noted that the philosophers who insist upon tracing the roots of moral obligation back to human reason are finalistic in general, and many of them are of autonomous morality, while the greater part of those who defend the heteronomy of morality coincide in assigning the ultimate force of obligation to God. Secondly, the finalistic philosophers seem

⁹¹ J. Scott, *supra* note 1, at 244-45.

⁹² *Id.* at 245.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 294.

⁹⁶ *Id.*

⁹⁷ *Id.* at 244.

to confuse obligation and sanction. Wild, for instance, establishes a necessary connection, as the essence of obligation, between the right order and our happiness. Sanction indeed implies this connection, but sanction implies obligation—otherwise sin would be only to frustrate our nature or its merely subjective end. This reason alone would be sufficient to underline the necessity of considering always the objective end of man in God. This would give a complete meaning to obligation without ever confusing it with sanction.

For this particular reason, Suarez has always insisted on the double insight of natural law. In other words, reason not only points out what is becoming or not to nature or right order; but beyond this, reason also points out that we are forced to keep that order by a Superior Power.

The compromising doctrine was clearly presented by Lombardi,⁹⁸ who, accepting the doctrine of Vasquez, presents the case of a man who has arrived at such a conception of the universe and its order as to be on the verge of considering it to be the work of God. Obligation may be perceived as absolute although God has not been accepted explicitly as yet.

On the other hand, however, the vision of the universe which a man must possess, in order reasonably to acknowledge himself subject to moral obligations without an explicit reference to the idea of God, is such as to constitute in itself the most likely basis for concluding—immediately afterwards—the existence of God himself; in

fact, that quality of absoluteness which we recognize in the nature of the contingent things which surround us, is already in some way their reference to the transcendent and absolutely immutable foundation of the divine essence, from which in the last analysis all possible forms of life draw their absolute truth.⁹⁹

It is not our present purpose to discuss fully—but merely to present—the compromising solution of Father Elter as expounded by Lombardi. Our opinion is that it goes from the implicit to the explicit and carries with it the underlying assumption that obligation can exist without an explicit idea of God (seeming to grant that the idea of God must be at least implicit). It is simply irrational to accept an absolute necessity without the knowledge of the person of the legislator and of his power to impose such an obligation.¹⁰⁰

If the fact of obligation were founded on the idiosyncrasy of human nature whose operations are well-founded and cannot be frustrated, still this thinking assumes that our nature is such because it is created by God.

Conclusions and Final Considerations

What we have presented in this article on the four dimensions of the natural law as theorized by Suarez could be easily reduced to a diagram:

⁹⁹ *Id.* at 156.

¹⁰⁰ And for this reason, the ultimate root of moral obligation for Suarez has to be the will of God. This position, besides, agrees with his definition of law as an act of will.

⁹⁸ R. LOMBARDI, *supra* note 80, at 155-56.

DIMENSIONS	POLARITY	
OBJECTIVITY	IMMUTABLE ¹⁰¹	ADAPTABLE ¹⁰²
KNOWLEDGE	A PRIORI ¹⁰³	A POSTERIORI ¹⁰⁴
ESSENCE	WILL OF GOD ¹⁰⁵	REASON OF MAN ¹⁰⁶
OBLIGATION	WILL OF GOD ¹⁰⁷	X

Suarez' remarks and examples on the immutability of natural law constitute a most formidable answer to the objection of modern relativists.

In relation to the dimension of knowledge, the subdivision of the problem of the origin of knowledge into its point of departure and its ultimate basis is really illuminating. His phenomenological study of human institutions has a very modern flavor to it.

To our taste, however, the a priori element demands more elaboration. Very little is said of the element of "connaturality," and Suarez refers to that "Divine light which has been shed upon us" as something taken for granted, without further elaboration.

The dimension of essence is restricted in Suarez to a marvelous synthesis of two medieval streams of thought; the modern

reader would want an ulterior clarification of what is the good of rational nature or of what is contrary to natural law. However, the distinctions made by Suarez¹⁰⁸ between reason without nature and nature without reason had ulterior possibilities which were not exploited by Suarez.

The dimension of obligation is a consequence of the dimension of essence as it stresses the will of God. I think we should stress the implication of Suarez' thought in this respect.

We have to keep in mind that Suarez, Vasquez and others call natural law a *lex indicans* in opposition to a *lex praeci-piens* which implies a sheer voluntaristic act. The intellectual content of the *lex indicans* led some realistic thinkers to the extreme expressed in the hypothetical assumption of Grotius—"etsiamsi daretur non esse Deum." Grotius was simply rebuking the positivism of Ockham; he never endorsed a deistic conception of a nature independent from God.

In assigning a main role to the will in the conception of natural law (which proximately is an act of judgment, ultimately an act of Divine Will), Suarez opposes with

¹⁰¹ Based upon human nature, "the same in all men."

¹⁰² Natural law "discerns the mutability in the subject matter."

¹⁰³ Suarez discerns two subproblems in the problem of the origin of knowledge.

¹⁰⁴ *Id.*

¹⁰⁵ There is a double insight in natural law.

¹⁰⁶ *Id.*

¹⁰⁷ But the ultimate root of obligation is only the will of God.

¹⁰⁸ He makes this distinction while discussing the possible misunderstandings of "connaturality."

vigor the rationalistic tendencies of Vasquez and of all those who talk of natural law as an *ideal city*, as does Professor Black.¹⁰⁹

¹⁰⁹ See Black, *The Two Cities of Law*, in *ADVENTURES OF THE MIND* 389 (R. Thruelsen ed. 1961).

Professor Black is presently Professor of Jurisprudence at Yale and seems to enjoy a reputation as expounder of legal philosophy. In the present article, he pretends to display the "prose" and "poetry" of law as it is manifested in that law prevailing in society and called "positive law" and that other image of law as men in their time think law ought to be, namely, "natural law." Professor Black seems to have a highly idealized concept of the "Heavenly City" with an odd compromise of the two poles of law as it is effected today in the American legal system. According to it, there is a rejection of "natural law" as something standing outside of the positive law without proclaiming, however, that mere legality is enough. It is a system operating through positive law since the Americans have chosen to embody in their Constitution those principles which seemed good to them of what they have taken to be natural justice. According to Black "so much is accepted of it [the natural law] as the people, through their representatives are willing to accept—and no more. . . ."

The effectiveness of this "fruitful and creative synthesis" is altogether dependent on the qualities of mind and character of those who work in law in whose minds there is a conceptual framework to guide and explain this activity which will commonly follow the lines of natural law thought in a generic sense. Professor Black keeps admitting and denying at the same time that "poetry of law," and he seems to enter through the rear door all those concepts which were previously slammed in their noses at the main gate.

According to Black, the natural law philosophers start with "assumed beliefs about the nature of man" and "from these are drawn conclusions as to what law ought to be." "The end product when fully developed, is a system of 'ideal' law, which can be held up as a model for comparison with positive law."

The error of modern rationalism consists exactly of the attempt to establish the system of human rights and the general theory of law in the light of the nature of man as a being standing by himself, to whom there is lacking any necessary reference to a Superior Being upon whose creative and regulative will he depends in essence and in action. The jurist who has conformed to the standard established by positivism evidently fails in his task as he loses, together with the correct concept of nature, the correct concept of law for which is lacking the coercive force upon the conscience of man. This is the first and principal effect of the law. As a matter of fact, the practical judgments of our conscience are expressed in the imperative mood.

Certainly there is a healthy intellectualism in Suarez, but that this intellectualism "per se" cannot supply the coercive force is implied in his distinction between *lex indicans* and *lex praecipiens*.

While the intellectual content of the *lex indicans* was given a deistic interpretation (never implied in those famous words of Grotius), it was also welcomed by the Newtonian spirit of the time. Since reason pervaded everything in nature, the "natural law" shifted from a juristic sense to a physical sense. However, natural law does not belong to the observed order of phenomena. The natural law is a conception of the philosophical order. The philosopher explains the facts in terms of the explanation he gives to the total reality. In empiric science the generalization concerning a specific field of inquiry is drawn from the facts observed in *that field*.

The voluntarism of Suarez, besides, has

given the definitive and proper perspective to the analogous notion of law as it applies to *positive* law. In the study of this latter point, Suarez' insights have discovered the human impact left in the institutions, offering us an "a posteriori" way to achieve more completely a notion of the nature of man. This is so very important that a traditional objection leveled against natural law concentrates particularly on this point: "Their reasoning starts with stated or assumed beliefs about the nature of man," says Professor Black.¹¹⁰

The concretized manifestations of positive law have been presented by Suarez as precise determinations of the general pattern of natural law. Suarez' thought is clear here; in the case of the human community, the general nature of the common good and the necessary means of achieving it are determined by natural law. However, the contingent means through which this end is to be realized by this or that community must be chosen by that community as particular positive law, not as an arbitrary construction, but as a precise determination of the general pattern of natural law.

In the conception of natural law, as in all

his philosophy of law, Suarez mediates between the medieval conception of law and the conditions of his time. As such, his elaboration projects itself into modern times and sheds definite light on them. His distinction between natural law and *jus gentium* received considerable development from his pen. While the natural law prohibits what is intrinsically evil, the *jus gentium* does not. For Suarez, it is not enough to see *jus gentium* as simply a civil law adopted as a matter of fact by many states, nor is it enough to state that *jus gentium* differs from written civil law in being established through custom. Suarez rather prefers to consider *jus gentium* as prohibiting acts which threaten the "moral and political unity of all men."¹¹¹

Suarez, in an age broken by violent struggles between nations, knew how to play up the solidarity among men who, despite being members of different states, consider themselves members of a universal society and observe certain laws by mutual agreement. "These are the laws called *jus gentium*."

By all means, Suarez was a "man for all seasons!"

¹¹⁰ *Id.*

¹¹¹ J. Scott, *supra* note 1, at 348.